

**From:** *Abhay Padgaonkar*  
**Date:** February 23, 2021  
**Docket:** APS Rate Review (E-01345A-19-0003); APS Rate Case (E-01345A-19-0236)  
**Re:** **The APS Settlement with the AG Falls Far Short of Making APS Customers Whole**

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Dear Commissioners:

For the following reasons, the APS Settlement agreement with the AG falls far short of full restitution to APS customers. And the Commission must make the customers whole for APS's wanton behavior and massive surplus by reducing the Revenue Requirement and/or the ROE in the pending APS Rate Case.

### **The \$24 million settlement is pittance compared to APS's non-MEP surplus revenue**

Analysis based on APS's own numbers as of December 2020 has shown that APS is generating surplus revenue of **\$104 million** annually — by transitioning, steering, and keeping customers on more expensive plans through flawed rate design, deceptive rate transitioning, faulty rate comparison tool, and botched customer education and outreach.<sup>1</sup>

- For customers with > \$120 overpayment annually, the surplus revenue from August 2017 to March 2020 would have been **\$221 million** (\$88.5 million annually \* 2.5 years). So, the \$24 million Settlement is only 10.9% and therefore is a pittance compared to the non-MEP surplus revenue to APS. To put it in perspective, APS generates \$24 million in revenue on average in about 2.5 days!
- AG's **one-time** settlement period stopped in March 2020, but the non-MEP overpayment to APS by customers has continued past March 2020 — and is ongoing even today. It may continue indefinitely unless the Commission takes proper action to stop it in the pending APS Rate Case (E-01345A-19-0236).

### **APS must be held accountable for its denials and misrepresentations over the years**

For years, APS misrepresented the MEP situation, minimized its severe impact while denying any overearning, produced no data or pro forma billing until compelled by the Commission, and misled customers and the Commission. Jeff Guldner is now admitting in his Rate Review docket filing announcing the Settlement that "we could have done better to guide customers through the process."

- **Oct 2018:** You may recall, however, that APS defiantly called its customer education and plan **"the most robust customer communications campaign in the Company's history,"** characterizing the extensive impact and customer response as **"very successful,"** and asserting that the **"Customer response to the Company's service plan transition communications was exceptional."**<sup>2</sup>
- **Sep 2019:** Comm. Kennedy characterized APS's customer education efforts as "woefully inadequate and unhelpful." And after she had reminded then-CEO Don Brandt that he was still under oath, she asked him why the Company was so ill-prepared. Don Brandt defiantly replied: **"Commissioner, I think we did an outstanding job of communicating with customers."**<sup>3</sup>
- **May 2020:** Pinnacle West's CFO Ted Geisler told the investors on the Q1 2020 earnings call that the difference in the bills on or off the MEP is **"de minimis"** (so minor as to merit disregard) and that **"it's difficult to read too much** into the proportion of customers that are or are not" on their MEP.<sup>4</sup>
- **Jun 2020:** CEO Jeff Guldner testified "... I do **take exception to Barbara Alexander's findings,** which generally assert that the Company was non-compliant due to failure to develop the customer outreach and education plan in 2018,"<sup>5</sup> and then Mr. Guldner went on to split some more legal hairs.

<sup>1</sup> "The Commission Must Account for APS's Non-MEP \$100+ Million Annual Windfall" at: <https://docket.images.azcc.gov/E000011669.pdf>

<sup>2</sup> APS Response at: <https://docket.images.azcc.gov/0000193159.pdf>

<sup>3</sup> Don Brandt testimony starting at the 3:02:25 mark at: [https://azcc.granicus.com/player/clip/3657?view\\_id=3&redirect=true&entrytime=10945](https://azcc.granicus.com/player/clip/3657?view_id=3&redirect=true&entrytime=10945)

<sup>4</sup> "Pinnacle West Q1 2020 Results - Earnings Call Transcript" at: <https://www.fool.com/earnings/call-transcripts/2020/05/09/pinnacle-west-capital-corp-pnw-q1-2020-earnings-ca.aspx>

<sup>5</sup> Jeff Guldner testimony starting at the 1:30:48 mark at: [https://azcc.granicus.com/player/clip/3937?view\\_id=3&redirect=true&entrytime=5448](https://azcc.granicus.com/player/clip/3937?view_id=3&redirect=true&entrytime=5448)